Supreme Court, U.S.
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No. 89-600

In The

Supreme Court of the United States

October Term, 1989

WILLIAM ST. CLAIR and JOHN SHELTON,

Petitioners,

v.

CITY OF CHICO and COUNTY OF BUTTE,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

1. In considering the jurisdictional question of ripeness in a land-use case, is the District Court required to allow additional time for further discovery when controlling facts are contained in the allegations of plaintiffs' third-amended complaint and in undisputed documents in the court record?

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OPINIONS BELOW

Accurate reproductions of the Court of Appeal decision and the reporter's transcript of the judge's ruling in the District Court are set forth in the Appendices to the Petition for Writ of Certiorari filed in this Court. Respondent City of Chico attaches reproductions of the Order Granting Defendants' Motions to Dismiss Plaintiffs' Third Amended Complaint as Appendix I, and of the additional documents cited to the District Court as Appendix II.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fifth Amendment, United States Constitution:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Fourteenth Amendment, United States Constitution:

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C. § 1983:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or any other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws shall be liable to the person injured in an action at law, suit in equity, or

other proper proceeding for redress. For purposes of this section, any Act of Congress applicable exclusive to the District of Columbia shall be considered to be a statute of the District of Columbia.

STATEMENT OF THE CASE

Plaintiffs William St. Clair and John Shelton filed this action on April 10, 1985 alleging violation of their due process and equal protection rights under 42 U.S.C. § 1983. Following various motions to dismiss, intervening discovery, and a motion to amend the complaint, plaintiffs filed a third-amended complaint in October 1987 claiming an unconstitutional taking of their property and violation of equal protection. Motions to dismiss by defendants City of Chico and County of Butte challenging *inter alia* lack of subject matter jurisdiction under Rule 12(b)(1) were heard on February 12, 1988. In ruling on defendants' motions to dismiss, the District Court considered the allegations of the complaint and documents placed in the court record by plaintiffs' counsel as factual support for their motion to allow filing of a third-amended complaint.

During the interim between filing of defendants' motions and the hearing by the District Court, depositions were scheduled and then continued by agreement of the parties. Plaintiffs never disputed the accuracy of the documents which they themselves put before the court, nor did they submit any additional documents or affidavits to refute defendants' challenge to jurisdiction.

Upon review of the undisputed facts of the case, the trial court concluded that this Court's decisions in *Williamson County Regional Planning Commission v. Hamilton Bank*, 473 U.S. 172 (1985) and *MacDonald, Sommer & Frates v. Yolo County*, 477 U.S. 340, *reh'g. den.*, 107 S.Ct. 22 (1986) are dispositive and that plaintiffs' claims are not ripe for review because no final decision was ever obtained from the City or the County regarding sewer connection for plaintiffs' proposed development. The court also found that plaintiffs' failure to take all necessary steps to obtain sewer service and receive a final decision from defendants was not excused by the futility exception, citing the Ninth Circuit case of *Kinzli v. City of Santa Cruz*, 818 F.2d 1449 (9th Cir. 1987).

The United States Court of Appeal for the Ninth Circuit agreed that the claims of the plaintiff developers were not ripe because neither the City nor the County had reached final definitive positions on plaintiffs' proposals for obtaining sewer service. The Appellate Court pointed to the undisputed material in the record which showed that discussions between the County and the City were continuing in regard to the land-use concerns raised by the City. The City wanted these concerns addressed prior to hook-up of the development to the City sewer system.

Plaintiffs' proposed Ravenwood project, containing 328 residential units, was located in the unincorporated area of Butte County outside the City's Sphere of Influence. After applying to the County for approval of a zoning change and a proposed tentative map, developers filed a general information application to the City inquiring as to possible sewer connection. In a letter dated

April 4, 1983 (Appendix II, attached as part of Exhibit B to the declaration of plaintiffs' counsel David M. Coyne) the City Director of Public Works informed the plaintiffs that while there was sufficient capacity in a trunkline then under construction for potential hookup to the City's sewer system, plaintiffs would have to fulfill several prerequisites. These prerequisites included amendment of the City's Sphere of Influence to allow annexation of the property to the City. Annexation could not occur until the property was within the City's Sphere of Influence. California Government Code § 56375.5. Amendment to the City's Sphere of Influence to include the property, as well as the annexation itself, could only be approved through LAFCO, the Local Agency Formation Commission. LAFCO was made up of representatives of the City, the County and the general public. California Government Code § 56325. Neither the City nor the County had a controlling vote on LAFCO and therefore could not have blocked approval of an application by plaintiffs, had one been made, for a change to the Sphere of Influence and annexation of the property. Plaintiffs never applied for annexation to the City.

Before ordering an amendment to a sphere of influence, LAFCO would have had to consider the comments of affected local agencies as well as multiple land-use issues, such as capacity and adequacy of public services for future development. If the developers had pursued the filing of an application for annexation, the City would have had an additional forum within which to address its concerns in regard to urban development and land-use. These concerns had been stated by the City Council during its initial consideration of hook-up of the Ravenwood

project. (Appendix II, Exhibit C to Declaration of David M. Coyne, Letter to the Board of Supervisors from City of Chico Mayor, Karl Ory.)

As shown by other documents before the trial court, the City subsequently informed developers that it did not appear appropriate *at that time* to further consider connection of the Ravenwood project to the City's sewer system because the City was in the midst of studies and discussions with the County regarding development of a unified land-use plan and approval and financing of master sewer and storm drainage plans. (Appendix II, Exhibit E to Declaration of David M. Coyne.) Far from informing developers that future sewer connection would be impossible, the City suggested further pursuit of the matter, acknowledging in a letter to developers that they would, "want to continue to monitor the progress of the discussions between the City and the County on these matters in the coming months." (Appendix II, Exhibit E to Declaration of David M. Coyne.)

Contrary to incorrect conclusions contained in petitioners' statement of the case, negotiations between the City and the County to resolve land-use concerns were continuing, and the City never approved nor rejected plaintiffs' application for City sewer service. Furthermore, the developers did not apply for annexation to the City, and therefore never sought to obtain a final decision as to sewer connection. The clear facts of the case show that petitioners' claims did not present a justiciable controversy and were not ripe for adjudication in the federal courts.

REASONS WHY PETITION FOR WRIT OF CERTIORARI SHOULD BE DENIED

I

The District Court Followed Established Procedure In Finding That Petitioners' Complaint Lacked Subject Matter Jurisdiction

A factual attack on a complaint under Rule 12(b)(1) challenges the existence of subject matter jurisdiction in fact, and matters outside the pleadings are considered. *Menchaca v. Chrysler Credit Corp.*, 613 F.2d 507 (5th Cir.), *cert. den.*, 449 U.S. 953 (1980). The Court is not restricted to the face of the pleadings but may inquire into facts as they exist by reviewing any evidence regarding jurisdiction. *Land v. Dollar*, 330 U.S. 731 (1947). The district court may consider any evidence submitted on the issue, and the burden is on the party alleging jurisdiction. *Western Transportation Co. v. Couzens Warehouse & Distributors, Inc.*, 695 F.2d 1033, 1038 (7th Cir. 1982). In *Western Transportation Co. v. Couzens Warehouse*, plaintiff failed to respond to facts submitted by defendant challenging the court's jurisdiction; and the action was properly dismissed. In the present case petitioners did not and could not dispute the facts asserted by respondents below because those facts had been placed in the record by petitioners themselves. The issue of ripeness does not involve the merits of a plaintiff's claim under 42 U.S.C. § 1983, but is a rather threshold, jurisdictional issue, going to the Court's power to hear the case. *See Thornhill Publishing Co. v. GTE Corp.*, 594 F.2d 730, 733 (9th Cir. 1979).

Belatedly, plaintiffs scream that they did not have sufficient time to conduct discovery to refute the jurisdictional challenge. However, as the Ninth Circuit pointed out in reviewing this case, discovery is necessary only if it is possible that plaintiffs can demonstrate the requisite jurisdictional facts if afforded that opportunity. *See Wells Fargo & Co. v. Wells Fargo Express Co.*, 556 F.2d 406, 430 n.24 (9th Cir. 1977.) The District Court here had all the information it needed to make a ruling on the issue of ripeness. The controlling questions of fact contained in allegations of the third-amended complaint and in documents submitted by plaintiffs were undisputed; therefore, further discovery would have been a useless waste of time. Plaintiffs had sufficient opportunity during the pendency of the action to conduct adequate discovery and to submit evidence to the trial court to carry their burden on the jurisdictional issue. The case was filed in 1985, followed by several motions on jurisdictional grounds. Defendants' final motions to dismiss were not heard until February 1988.

Petitioners argue that under the holding in the case of *Bell v. Hood*, 327 U.S. 678 (1946) this case should not be dismissed without consideration of its merits. Petitioners assert that the standard of review for jurisdictional questions in intertwined cases, where the merits cannot be separated from jurisdiction, should be equally applicable to land-use cases involving issues of ripeness. Extension of this type of jurisdictional review to land-use cases would destroy the effectiveness of the whole ripeness doctrine. The necessity of a final decision by the government which inflicts a concrete harm on the plaintiff landowner prevents premature adjudication where the full

extent of regulation has not yet been finally fixed. *Kinzli v. City of Santa Cruz*, 818 F.2d 1449, 1453 (9th Cir. 1987). The issue of ripeness has nothing to do with the merits of claims challenging land-use regulation. Dismissal of a land-use case as unripe does not address the merits of the claims. See *MacDonald, Sommer & Frates v. Yolo County*, 447 U.S. 340, 352-53; *Williamson County Regional Planning Commission v. Hamilton Bank*, 473 U.S. 172, 185 (1985). A jurisdictional attack which does not implicate merits of a federal cause of action is not bound by the strict *Bell v. Hood* standard. *Williamson v. Tucker*, 645 F.2d 404, 415 n.9 (5th Cir. 1981).

II

The Holding That This Case Is Not Ripe For Review Is Consistent With Federal Law And Does Not Present An "Injustice" That Should Be Settled By This Court

Petitioners concede that the Ninth Circuit has established appropriate standards for application of the jurisdictional requirement of a final agency decision. According to the test developed in *Kinzli v. City of Santa Cruz*, 818 F.2d 1449 (9th Cir. 1987), modeled on this Court's opinion in *Williamson County Regional Planning Commission v. Hamilton Bank*, 473 U.S. 172 (1985), and since followed in other cases:

> [T]he "final decision" which inflicts a concrete injury on the plaintiff and is ripe for adjudication as a claim of a regulatory taking, even if the claim is brought under 42 U.S.C. section 1983, requires at least two decisions against [landowners]: (1) a rejected development plan, and (2) a denial of a variance.

Kinzli, 818 F.2d at 1454. In the present case developers admittedly failed to pursue annexation of their property to the City which they knew to be an explicit prerequisite to the sewer connection. In so doing, they failed to make a "meaningful application" as is required before a takings claim is ripe for adjudication. *Id.* at 1454-55. In the absence of any attempt to annex the property, sewer connection was impossible. As the trial court correctly recognized, developers simply did not take all the steps necessary to obtain a final decision. Moreover, as is obvious from a review of the documents attached to the declaration of plaintiffs' counsel and considered by the court, discussions between the City and County as to resolution of land-use concerns were ongoing. These concerns which had been expressed by the City Council when the Ravenwood Project was first brought to its attention involved consistency of the City and County general plans and Spheres of Influence, urban boundaries and proposed future zoning. In considering extension of sewer service to an area in an unincorporated section of the County and not within the City's Sphere of Influence, the City quite naturally and legitimately wanted to explore the impact of this action on future land-use issues, including urban growth and provision of City services. As shown by the documents before the District Court, the City and County were close to resolving these matters prior to the filing of plaintiffs' complaint.

Petitioners assert that the futility exception applies because they claim that the City and County had reached an impasse. The futility exception is allowed only where litigants can demonstrate that further attempts to develop the property would have been futile. *Kinzli v. City of Santa*

Cruz, 818 F.2d at 1454. To invoke the futility exception, landowners bear a heavy burden. *Lake Nacimiento Ranch Co. v. County of San Luis Obispo*, 830 F.2d 977, 980 (9th Cir. 1987). "[M]ere allegations by a property owner that it has done everything possible to obtain acceptance of a development proposal will not suffice to prove futility." *Herrington v. County of Sonoma*, 857 F.2d 567, 570 (9th Cir. 1988); *Unity Ventures v. County of Lake*, 841 F.2d 770, 776 (7th Cir. 1988).

The *Herrington v. County of Sonoma* case cited by petitioners presented a substantially different situation for analysis of jurisdiction. In the *Herrington v. County of Sonoma* case, evidence at trial showed that the only way the landowners could obtain approval for their project would have been to seek a General Plan Amendment which, by testimony of a County employee, they would have had "no chance of obtaining." *Id.* at 1496.

The Seventh Circuit decision in *Unity Ventures v. County of Lake*, 841 F.2d 770 (7th Cir. 1988), presents a similar situation to this case. A developer had submitted plans to the County for connection to its sewer system. The County approved the plans, but the Village of Grayslake, the approval of which was required under a Sphere of Influence Agreement, refused to consent to the connection. *Id.* at 773. The developer was told informally by the mayor that the village would not consent to connection *at that time* because of concerns about the capacity of the sewer. *Id.* Basing its decision on the Ninth Circuit doctrine developed in *Kinzli* and *Herrington*, the Seventh Circuit Court of Appeals held that the case was not ripe because the developer had not submitted a formal application and had never received a final decision on the

sewer connection. Although the developer argued that further pursuit of sewer connection would have been futile, the court held that it was simply impossible to tell ultimately what actions would have been taken on a formal application.

Similarly, the developers in this case failed to apply for the necessary annexation of their property to the City of Chico. Therefore, petitioners never made a "meaningful application." *Kinzli*, 818 F.2d at 1454-55. Also, like the developer in *Unity Ventures*, petitioners had only been told that connection was not appropriate *at that time*, while the City and County were still looking at land-use and sewage facilities. No final decision had been made.

As these cases demonstrate, there is no conflict in procedure utilized by the courts for considering the ripeness of a land-use claim. Each case must be assessed individually, on its own facts and circumstances. Sufficient precedent exists as guidance for the district courts in making a determination as to whether or not there has been a final decision.

In the case of *Havens Realty Corp. v. Coleman*, 455 U.S. 362 (1982) this Court addressed the issue of standing and found that the plaintiff in that case deserved an additional opportunity to amend the complaint. This Court specifically pointed out, however, in the *Havens* opinion that if the petitioner could not allege sufficient facts in his pleading to state an injury in fact and meet the standing requirements established by prior decisions, the complaint should be dismissed. (*Id.* at 378.) Even if the *Havens Realty Corp. v. Coleman* case were on point, it would not

assist petitioners in this action. The decision by the District Court in this case was made on the basis of allegations contained in plaintiffs' third-amended complaint and on facts submitted to the court by petitioners themselves. The court made no findings of fact, nor resolved any disputed factual issues, as it was not necessary to do so. The facts before the District Court were uncontradicted and formed an appropriate basis for assessing whether or not the claim was ripe for adjudication.

CONCLUSION

For all of the reasons set forth herein and based on all of the foregoing authorities, it is respectfully requested that this Court deny the petition for writ of certiorari.

DATED: November 13, 1989

Respectfully,

BOLLING, WALTER & GAWTHROP

By: CAROLEE KILDUFF
Attorneys for Respondent
City of Chico

APPENDIX

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

WILLIAM ST. CLAIR and JOHN SHELTON, Plaintiffs, v. CITY OF CHICO and COUNTY OF BUTTE, Defendants.	No. Civ. S 85-0534 EJG ORDER GRANTING DEFENDANTS' MOTIONS TO DISMISS PLAINTIFFS' THIRD AMENDED COMPLAINT

This matter was before the court on February 12, 1988 for hearing on defendants' motions to dismiss plaintiffs' third amended complaint. David M. Coyne of Gray, Plant, Mooty, Mooty & Bennett appeared on behalf of the plaintiffs. Carolee Weber of Bolling, Walter & Gawthrop appeared on behalf of defendant City of Chico. E. Clement Shute, Jr. of Shute, Mihaly & Weinberger appeared on behalf of defendant County of Butte. Upon consideration of the moving and opposing papers and the oral argument of counsel, the court enters the following order.

Plaintiffs' claims under Section 1983 of the Civil Rights Laws (42 U.S.C. § 1983) are not ripe for adjudication and are dismissed ~~with prejudice~~ for lack of subject matter jurisdiction (Fed. Rule of Civil Proc. ("FRCP") 12 (b)(1)). The court finds that the Supreme Court's decision in *Williamson County Regional Planning Commission v. Hamilton Bank*, 473 U.S. 172 (1985) and *MacDonald, Sommers & Frates v. Yolo County*, 106 S. Ct. 2561 (1986), as well as the Ninth Circuit's decisions in *Kinzli v. City of Santa*

Cruz, 818 F.2d 1449 (9th Cir. 1987), and *Herrington v. County of Sonoma*, Nos. 86-2620, 86-2728 (9th Cir. Dec. 24, 1987), are dispositive, demonstrating that no justiciable controversy has been presented herein because plaintiffs have not received a final decision from defendants regarding sewer connection.

The court further finds that plaintiffs' failure to take all necessary steps to obtain sewer service and thus to receive a final decision from the defendants is not excused by the futility exception to the finality doctrine. In this regard, the Ninth Circuit's decision in *Kinzli v. City of Santa Cruz*, 818 F.2d 1449, is dispositive.

Finally, given this disposition of the case, the court does not reach defendants' arguments that the taking claim alternatively should be dismissed because of the existence of an adequate state procedure for the remedy of plaintiffs' alleged injuries (FRCP 12(b)(1)) or because of plaintiffs' failure to state a claim upon which relief can be granted (FRCP 12(b)(6)).

IT IS SO ORDERED.

DATED: 3/10/88

/s/ Ed. J. Garcia
EDWARD J. GARCIA, JUDGE
UNITED STATES DISTRICT COURT

016.txt/BUTTE

DECLARATION OF SERVICE BY MAIL

Re: *Case No. Civ. S 85-0534 EJG*

I, the undersigned, certify and declare that I am a citizen of the United States, over the age of 18 years, employed in the City and County of San Francisco, State of California, and not a party to the above-entitled cause. On November 20, 1987, I served a true copy of the within

PROPOSED ORDER GRANTING DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' THIRD AMENDED COMPLAINT

by depositing said document(s) in the United States Mail at San Francisco, California, in a sealed envelope with the postage thereon fully prepaid addressed to the following:

Joseph M. Alioto
ALIOTO & ALIOTO
650 California Street
23rd Floor
San Francisco, CA 94108

Daniel R. Shulman
David M. Coyne
GRAY, PLANT, MOOTY, MOOTY & BENNETT
3400 City Center
33 South Sixth Street
Minneapolis, MN 55402

Laurence L. Angelo
BOLLING, WALTER & GAWTHROP
7919 Folsom Blvd., Ste. 300
P.O. Box 255200
Sacramento, CA 94104-2105

I do hereby certify that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 19, 1988, at San Francisco, California.

/s/ David Kelley
DAVID KELLEY

ALIOTO & ALIOTO
Joseph M. Alioto
650 California Street
23rd Floor
San Francisco, California 94108
Telephone: (415) 434-2100

GRAY, PLANT, MOOTY, MOOTY & BENNETT
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UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

WILLIAM ST. CLAIR and JOHN SHELTON, Plaintiffs, v. CITY OF CHICO and COUNTY OF BUTTE, Defendants.	)	No. Civ. S 85-0534 EJG *DECLARATION OF DAVID M. COYNE*

I, David M. Coyne, depose and state that:

1. I am one of the attorneys representing plaintiffs William St. Clair and John Shelton in the above-entitled matter.

2. Attached hereto as Exhibits A through E are copies of documents obtained in this matter through discovery.

3. Exhibit A is a copy of a letter dated March 25, 1983, showing the approval of plaintiffs' application for a zoning change to permit the construction of the Ravenwood project. Condition 27, on page 3 of that letter, requires that plaintiffs "Hook up to the santiary sewer, City of Chico."

4. Exhibit B is copies of plaintiffs' application for a sewer connection, together with two letters from the City of Chico indicating that sewer capacity was available for the connection of the Ravenwood project to the City sewer system, and specifying the conditions therefor.

5. Exhibit C is a copy of a letter dated September 29, 1983 from Karl E. Ory, Mayor of the City of Chico, stating additional conditions imposed for approval of connection of the Ravenwood project to the City sewer system.

6. Exhibit D is copies of letters from the California Regional Water Quality Control Board and the Butte County Planning Commission, stating that plaintiffs' proposed sewage treatment facility met those agencies' standards.

7. Exhibit E is copies of a memorandum and letter reflecting the inability of plaintiffs to construct the Ravenwood project, as a result of defendants' actions.

8. These documents support the primary factual statements made in plaintiffs' "Background" section of their Memorandum in Support of Motion for Leave to Amend Complaint.

Dated: October 2, 1987

/s/ David M. Coyne
David M. Coyne

7235F

EXHIBIT A

BUTTE COUNTY

PLANNING COMMISSION

7 COUNTY CENTER DRIVE –
OROVILLE, CALIFORNIA 95965
PHONE 534-4601

March 25, 1983

John Shelton and
Bill St. Clair
1704 Mangrove Ave.
Chico, Ca.
95926

Re: Rezone File 82-19

Gentlemen:

Regarding the project described below:

"John Shelton and Bill St. Clair – Rezone from "A-SR" (Agricultural-Suburban Residential and "SR-1" (Suburban Residential – 1 acre parcels) to "PA-C (Planned Area-Cluster) to allow the development of a 361 unit residential development on 85 acres with an evaporative sewage disposal system on 75 acres on property located on both sides of Sycamore Creek, on the north side of Eaton Road, approximately 2000 ft. east of State Highway 99, identified as AP 44-04-100, 101 and 102"

the Planning Commission, at their meeting on March 24, approved the "PA-C" zoning on that portion south of Sycamore Creek, subject to the following conditions:

1. Submit road and drainage plans to the Department of Public Works for approval and install the required facilities.
2. Provide 20 ft. radius property line returns at all street intersections.
3. Provide right-of-way for standard S-5 at all street intersections.
4. Indicate a 55-ft. building setback line from the southerly line of the west bound lanes of Eaton Road.
5. Street signs shall be provided by the developer at all street intersections per County requirements. (Submit 5 alternate street names for each street to the County Address Coordinator for approval of street names.)
6. Deed 69 feet from the existing right-of-way line of Eaton Road to the County of Butte.
7. Construct full street section on all interior streets. Interior streets shall be 20 feet in width, paved with 2" AC, 4" Class II aggregate base.
8. Provide monumentation as required by the Department of Public Works in accordance with accepted standards.
9. Street grades and other features shall comply with the Butte County Ordinances, design resolution and other accepted engineering standards.
10. Provide permanent solution for drainage.
11. All easements of record to be shown on the final map.

12. Meet requirements of Butte County Fire Department or other responsible agency.

13. Street lighting shall be provided in accordance with Butte County requirements, accepted design criteria, and recommendations of PG&E.

14. Submit site development plan to Department of Public Works for approval and construct or install the required facilities.

15. Provide 1 ft. no access strip along Eaton Road except at interior streets.

16. Pay off assessments.

17. Meet the requirements of the utility companies (i.e., PG&E, Pacific Telephone, water, sewer).

18. Pay any delinquent taxes.

19. File a tentative and final subdivision map and pay appropriate fees.

20. Move interior streets to line up with future centerlines of Codman Avenue and Morseman Avenue.

21. Developer shall provide all required traffic safety signs including stop signs.

22. Developer shall pay pro-rata share toward installation of traffic signal at intersection of Hicks Lane and Eaton Road.

23. Construct full street section on future west bound lanes of Eaton Road to 32 ft. face of curb to face of curb (no parking) with vertical curb, gutter, sidewalk and 2" AC, 12" AB, SC 250 prime, fog seal and 95% relative compaction.

24. Construct one-half street section plus 12 feet on existing Eaton Road (future east bound

lanes) to 32 ft. face of curb to face of curb (no parking) with vertical curb, gutter, sidewalk and 2" AC, 12" AB, SC 250 prime, fog seal and 95% relative compaction.

25. Provide a letter or other documentation from the California Water Service Company stating that they are willing and able to supply domestic water to the property.

26. Destroy under permit any water wells within the property boundaries proposed to be abandoned. Provide compliance with the Butte County Water Well Ordinance for any wells not proposed for abandonment.

27. Hook up to sanitary sewer, City of Chico.

28. Install and maintain landscaping per approved landscape plan.

29. Building permit applications for residences in this subdivision shall be subject to any school mitigation fees estalished by an ordinance enacted prior to the filing of such application, or a community facilities act of 1982 district will be created pursuant to California Government Code Section 53311, et. seq., covering the project area prior to the issuance of any building permits.

30. Form a homeowner's association to maintain the mini-park and other lands owned in common.

31. Form and/or participate in a drainage maintenance district for Sycamore Creek/Mud Creek.

32. Comply with recommendations of the Butte County Mosquito Abatement District to minimize the potential for mosquito breeding from standing water in the Sycamore Creek Channel.

33. Record an air avigation easement on the property. Place a statement on the final map that the property is subject to aircraft noise.

34. Limit building height to two-story to insure no possible conflict with air approaches.

35. Applicant must also comply with all other applicable State and local statutes, ordinances and regulations.

A report of this action will be made to the Board of Supervisors on April 5 at which time they will set a public hearing. You will be notified of that date.

Please feel free to contact our office, if you have any questions.

Sincerely,

/s/ B. A. Kircher
B. A. Kircher
Director of Planning

/hd

cc: Cal Bachman & Associates
1704 Mangrove Ave.
Chico

EXHIBIT B

(PURSUANT TO CHAPTER 15.36 OF THE CHICO MUNICIPAL CODE)

SECTION 1 – NOTICE TO APPLICANT

THE SEWER CONNECTION CHARGED QUOTED HEREON IS THAT FEE PAYABLE TO THE CITY OF CHICO FOR THE PRIVILEGE OF CONNECTING TO THE CITY SEWER SYSTEM AND AS REIMBURSEMENT TO THE CITY FOR ITS CAPITAL COSTS IN CONSTRUCTING THE PRESENT SEWER SYSTEM, AS WELL AS FOR ANY FUTURE ADDITIONS THERETO. IT DOES NOT INCLUDE ADDITIONAL COSTS WHICH THE APPLICANT MAY INCUR UNDER PRIVATE CONTRACT AT HIS FULL COST FOR INSTALLATION OF NECESSARY MAIN LINE OR LATERAL EXTENSIONS, MANHOLES, AND SIMILAR APPURTENANT STRUCTURES AS MAY BE REQUIRED.

THE SEWER CONNECTION CHARGE QUOTED HEREON SHALL BE VALID FOR A PERIOD OF SIXTY (60) DAYS OR UNTIL THE EFFECTIVE DATE OF ANY AMENDMENTS TO THE CITY'S SEWER CONNECTION CHARGES, WHICHEVER IS LONGER. ANY AMENDMENTS TO THE CITY'S SEWER CONNECTION CHARGES BECOME EFFECTIVE ON JULY 1 OF EACH YEAR.

SECTION II – APPLICANT USE

A. Owner: John Shelton

Address:

Home Phone:

Bus. Phone:

B. Applicant: Cal Bachman

Address: 3012 Esplanade

Chico

Home Phone:

Bus. Phone: 342-4136

C. Reason for Initiating Application:

[ ] Application for Plan Check Bldg. Plan No. DNA

[ ] Subdivision Map (5 or more lots)

[X] General Information

D. Property to be Served:

1. Address: Eaton RD. (Raven Wood Subd.)

2. A. P. No(s): 44-04-102

3. Existing Use:

a. [X] Vacant

b. [ ] Residential No. of Units:

c. [ ] Non-Residential description of Use:

4. No. of Residential Unites to be Added to the Property: 328

5. Total Number of Unites to be Served: 328

Mail Completed Sewer Connection Application to:

[ ] Owner [X] Applicant

Submitted by:

/s/ Calvin W. Bachman
Signature of Owner/Applicant
Date 3/7/85

Application Fee Paid: $20.00 Official Receipt NO.. 66076 Date: 3/7/83

APPLICATION NO.
1983

(PURSUANT TO CHAPTER 15.36 OF THE CHICO MUNICIPAL CODE)

SECTION 1 – NOTICE TO APPLICANT

THE SEWER CONNECTION CHARGED QUOTED HEREON IS THAT FEE PAYABLE TO THE CITY OF CHICO FOR THE PRIVILEGE OF CONNECTING TO THE CITY SEWER SYSTEM AND AS REIMBURSEMENT TO THE CITY FOR ITS CAPITAL COSTS IN CONSTRUCTING THE PRESENT SEWER SYSTEM, AS WELL AS FOR ANY FUTURE ADDITIONS THERETO. IT DOES NOT INCLUDE ADDITIONAL COSTS WHICH THE APPLICANT MAY INCUR UNDER PRIVATE CONTRACT AT HIS FULL COST FOR INSTALLATION OF NECESSARY MAIN LINE OR LATERAL EXTENSIONS, MANHOLES, AND SIMILAR APPURTENANT STRUCTURES AS MAY BE REQUIRED.

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A. Owner: John Shelton

Address:

Home Phone:

Bus. Phone:

B. Applicant: Cal Bachman

Address: 3012 Esplanade

Chico

Home Phone:

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[X] General Information

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a. [X] Vacant

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Mail Completed Sewer Connection Application to:

[ ] Owner [X] Applicant

Submitted by:

/s/ Calvin W. Bachman
Signature of Owner/Applicant
Date 3/7/85

Application Fee Paid: $20.00 Official Receipt NO.. 66076 Date: 3/7/83

APPLICATION NO.
1983

A. *Property Information:*

1. In City [ ] Yes [X] No
2. In City as of June 18, 1982 (Including Annexation No. 384): [ ] Yes [X] No
3. Within City Sewer Service Area: [ ] Yes [X] No
4. Annexable: [ ] Yes [X] No [ ] DNA
5. Existing Zoning: D/N/A County
6. Front Footage: 2652.82 l.f. (SHORTEST SIDE – 60 L.F.MIN.)
7. Property Area: 85 acres
8. No. of Residential Units Presently Connected to Sewer: -0-
9. No. of Non-Residential Acres Presently Connected to Sewer: –
10. Property in a Sewer Assessment District: [X] No. [ ] Yes. Name:
11. Subject to NECSAD Reimbursement Agreement: [X] Yes [ ] No
12. Main Extension Required: [ ] No [X] Yes. Estimated Cost $780,000
13. Prior Sewer Connection Fees *Paid* for:

    a. Trunk Line Capacity Fee:

       No. of Units -0- No. of Acres –

    b. Water Pollution Control Plant Fee

       No. of Units -0- No. of Acres –

    Sewer Main Installation Fee:

       Front Footage -0- l.f.

14. Subject to *Additional* Sewer Connection Fees for:

    a. Trunk Line Capacity Fee:

       No. of Units 328

    b. Water Pollution control Plant Fee:

       No. of Units 328

    c. Sewer Main Installation Fee:

       Front Footage -0- lf

B. *Computation of Applicable Sewer Connection Fees:*

1. Trunk Line Capacity Fee: (units)328 x $750 = $ 246,000
2. Water Pollution Control Plant Capacity Fee: (units)328 x $750 = $ 246,000
3. Sewer Main Installation Fee:
   [ ] $20/front foot x l.f. $ DNA
   [X] DNA
4. Less Application Fee (*if connection fees paid within 60 days of the date of city Response letter.)* $(20.00)
5. NET ADDITIONAL SEWER CONNECTION FEE: $ 491,980

DEPARTMENT
OF PUBLIC WORKS

Fifth and Main Street
P.O. Box 3420
Chico, CA 95927
(916) 895-4891
ATSS 459-4891

April 4, 1983

DPW Chrono/Subd.

Cal Bachman
3012 Esplanade
Chico, California 95926

Attn: Cal Bachman

Re: City of Chico Department of Public Works Application for Sewer Connection No. 1983 – Ravenwood Subdivision (PUD)

Gentlemen:

Reference is made to the above noted application for sanitary sewer connection submitted by your organization to this office for processing and to the subsequent conversation by Mr. Bob Nunes of this office with you relative to estimate of costs for sewer service to same.

In compliance with your request the following comments are made relative to availability of sewer service to this property:

1. This office has determined that there is available capacity in the Northeast Chico Sanitary Sewer Assessment District trunk line currently under construction to serve this property, subject to the construction of a line extension from same to the property. (See enclosed copy of Sanitary Service

Application No. 1983 showing location, sizing, and estimate of costs for same along with applicable sewer connection fees.)

2. In order to obtain sanitary sewer service for this property an amendment to the City of Chico Sphere of Influence would be required. (Chico City Council and LAFCO)

3. Developer would be required to execute an annexation and sewer service agreement with the City of Chico, authorizing annexation of said property and payment of sanitary service connection fees.

If any additional information is required on this subject, please feel free to contact this office at your convenience.

Very truly yours,
/s/ A. J. Savitz,
A. J. Savitz, Director
Director of Public Works

AJS:cb

MUNICIPAL BUILDING

P.O. Box 3420
Chico, CA 95927
(916) 895-4800
ATSS 459-4800

Cal Bachman
3012 Esplanade
Chico, California 95926

Date: April 5, 1983

Re: Sewer Connection Application #1983

With respect to the Sewer Connection Application cited above, the sewer connection fee payable to the City, in the

event you determine to proceed with connection, will be $491,980.00. The connection fees quoted hereon shall be valid for sixty (60) days from the date of this letter or until the effective date of any amendment to the City's Sewer Fees, whichever is longer. Any amendments to the City's Sewer Connection fees become effective on July 1st of each year.

Should you desire to proceed with this connection, you should take the action marked with an "X" below. When these actions are completed, you may then contract with a license plumbing contractor, who may then secure the necessary permits from the Department of Public Works, and proceed with the desired connection.

XX Contact the City Planning Office in the Municipal Building, 5th and Main Streets, phone 895-4851, and execute a "City of Chico Annexation Petition" or "Annexation and Sewer Service Agreement", as appropriate, prior to proceeding with the sewer connection.

XX Pay the above noted connection fees, and secure the necessary permit from the Department of Public Works, second floor, Municipal Building, Main and 5th Streets.

XX Extend and pay for the necessary sewer extension required to service your property. In this regard, you may desire to execute with the City, a "Sewer Reimbursement Agreement". If so, please contact the Department of Public Works about such an agreement at your convenience.

___ No further action is necessary since connection fees were previously paid, except to secure required permits from the Department of Public Works.

___ This property is located outside of the City's sewer service area and is not eligible for connection to the City's sewer system.

A. J. SAVITZ, DIRECTOR
DEPARTMENT OF PUBLIC WORKS

/s/ By: M. Dale Shaddox
M. Dale Shaddox
Administrative Assistant
Phone: 895-4872

AJS:ce
Attachment: Sewer Application
Dist.S.S. Application Chrono File System
Building Folder: Eaton Rd. (AP 44-04-102)
Ravenwood Sub.
(XX) Planning Office

DPW
9/82

EXHIBIT C

OFFICE OF
THE MAYOR

P.O. Box 3420
Chico, CA 95927

(916) 895-4815
ATSS 495-4815

September 29, 1983

Board of Supervisors
County of Butte
25 County Center Drive
Oroville, CA 95965

Re: Urban development around Chico
Ravenwood development in NE Chico

As you know, a committee of the City Council and Board of Supervisors met on September 8 to review the above matters, with the understanding that reports would be submitted by committee members to the Board on September 13 and to the Council on September 20. It is our understanding, through news reports, that the Ravenwood project was approved by the Board, subject again to its connecting to the City's sewer system.

The City Council, at its September 20 meeting, accepted the committee's recommendation for approval of the Ravenwood project subject to the following:

1. That City and County staffs recommend new urban boundaries and sphere(s) of influence (i.e. Sycamore Creek north, Greenline west, Butte Creek south, foothill power lines east) for review and ratification by the Supervisors and Council. This urban zone would remain in place until the population within the zone reached 100,000 (or an agreed upon new population) or ten years.

2. That the City and County sponsor a Chico urban plan committee to review the City and County's general plans and bring them into conformity, and propose a comprehensive urban plan to be ratified by both bodies.

3. That the County adopt a policy whereby existing zoning outside the new urban zone would remain in place. All A-2 zoning within 3 miles of the urban zone to be rezoned with not less than 5 to 10 acre minimums.

4. That the Ravenwood project meet all City development and public improvement standards.

Since the City Council and Board of Supervisors wish this matter to be resolved at an early date, the Council asked

once again that its Intergovernmental Relations Committee meet with Supervisors Wheeler and Dolan in an effort to secure agreement on the matters outlined above. The Intergovernmental Relations Committee has indicated it will meet again on October 13 at 4:00 P.M. A copy of this letter is being provided to Supervisors Dolan and Wheeler and to the Chief County Administrative Officer.

Sincerely
/s/ Karl E. Ory
KARL E. ORY
Mayor

KEO:ic

cc: City Council (7)
City Clerk
City Manager

Public Works Director
Planning Director

Supervisor Dolan
Supervisor Wheeler

CCAO Nichols
Cal Bachman

EXHIBIT D

GEORGE DEUKMEJIAN, *Governor*

STATE OF CALIFORNIA – THE RESOURCES AGENCY

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD –
CENTRAL VALLEY REGION

3201 S STREET
SACRAMENTO, CALIFORNIA 95816-7080
PHONE: (916) 445-0270

8 February 1983

Mr. Cal W. Bachman, P.E.
Bachman & Associates Engineers
3012 The Esplanade
Chico, CA 95926

RAVENWOOD SUBDIVISION

At our meeting lask week, you submitted a revised proposal for a sewage treatment disposal system and requested my preliminary comments. From our initial review of the information, which you submitted, it appears that you have demonstrated the feasibility of using stabilization/evaporation ponds for the subject subdivision. After further review of your submittal, I will advise you of additional information requirements. We previously discussed the need for soil investigation demonstrating adequate depth of impervious soils in the pond area.

If you need additional information, please feel free to call me at (916) 322-1592.

/s/ Larry F. Kogh
for JOSEPH J. HENAO
Area Engineer

JJH:rar

cc: Butte County Health Department, Chico
Butte County Planning Commission, Oroville
Mr. William St. Clair, Chico

BUTTE COUNTY
LAND OF NATURAL WEALTH AND BEAUTY
PLANNING COMMISSION

7 COUNTY CENTER DRIVE – OROVILLE, CALIFORNIA
95965
PHONE 534-4601

July 22, 1983

John Shelton and
Bill St. Clair
1704 Mangrove Ave.
Chico, CA 95926

Re: Rezone File 82-19

Gentlemen:

Regarding the project described below:

"John Shelton and Bill St. Clair – Rezone from "A-SR" (Agricultural-Suburban Residential and "SR-1" (Suburban Residential – 1 acre parcels) to "AP-C" (Planned Area Cluster) to allow the development of a ~~361~~ 328 unit residential development on 85 acres with an evaporative sewage disposal system on 75 acres on property located on both sides of Sycamore Creek, on the north side of Eaton Road, approximately 2000 ft. east of State Highway 99, identified as AP 44-04-100, 101 and 102".

The planning Commission, at their meeting on July 21, determined that the alternative sewage disposal system would be a viable alternative subject to the following conditions:

1. Provide a letter or other documentation from the California Water Service Company stating that they are willing and able to supply domestic water to the project.

2. Destroy under permit, any water wells within the property boundaries proposed to be abandoned. Provide for compliance with

the Butte County Water Well Ordinance for any wells not proposed for abandonment.

3. Provide community sewage collection, treatment and disposal facilities that comply with California State Regional Water Quality Control Board, the Code of Butte County, California State Health and Safety Code and other applicable codes and regulations governing the design, construction, and operations of the facilities.

4. Provide a service and maintenance district, county service area, or other legal entity, not including a homeowners association, or entities adequate to insure the construction, maintenance, repair, or improvements to the community sewage collection treatment and disposal facilities.

5. Coordinate the installation of the pipeline beneath Sycamore Creek with the State Reclamation Board and Army Corps of Engineers.

6. That the Board of Supervisors not formally adopt this as an approved alternative until all efforts have been exhausted with the City of Chico to get approval of the hookup to the sewer system.

7. That the 50 acres lying northeast of Sycamore Creek be reincorporated into the PA-C.

A report of this action will be made to the Board of Supervisors on August 2, at which time they will set a public hearing. You will be notified of that date.

Please feel free to contact our office, if you have any questions.

Sincerely,
/s/ B. A. Kircher
B. A. Kircher
Director of Planning

/sb

cc: Cal Bachman & Associates
1704 Mangrove Ave.
Chico

EXHIBIT E

BOARD OF SUPERVISORS
ADMINISTRATION CENTER
25 COUNTY CENTER DR. -
OROVILLE, CALIFORNIA 95965

TELEPHONE: (916) 534-4224

Jane Dolan, Chair
Second District

Al Saraceni
First District

Hilda Wheeler
Third District

Bertha Moseley
Fourth District

Len Fulton
Fifth District

September 12, 1983

To: Board of Supervisors

From: Supervisor Wheeler

Subject: Greater Chico area land use issues - Ravenwood

At the September 8, 1983 Intergovernmental Relations Committee meeting, several points of discussion were raised about urban development in the Chico urban area in general, and about the appropriateness of the proposed Ravenwood PAC specifically. In a memorandum dated September 9, 1983, the Intergovernmental Committee has outlined the main points of discussion (copy attached). As per our agreement with the Council members present at the meeting, Supervisor Dolan and I are bringing these points forward for your consideration.

The Chico City Council will do the same at their September 20 meeting. In response to Councilman Nichols' three points of consideration, I would have the following comments:

1. *New urban boundaries in spheres of influence.* I would refer you to the Intergovernmental memorandum from county Planning staff dated November 17, 1981 regarding the General Plan Amendment for the Chico Area Land Use Plan, File #80-72. In it, staff points out that, historically, the City of Chico called for city – county cooperation in land use policy . . . in response, the Board selected Supervisors Dolan and Wheeler as a committee of two in early 1980 to work out an agreement with the City of Chico. Assisted by the Planning staffs of both agencies, the Board Committee and their City Council counterparts reached an agreement, endorsed by the full Board and the full Council in March of 1980. An EIR was prepared and circulated. I would point out to the Board at this time that the county has fulfilled its first obligation to the City of Chico in regard to cooperation in planning for the Chico urban area. Although the focus of the hearings most recently held for the county General Plan Amendment in the Chico area was on the Greenline, nevertheless, it did include consideration and modification of the northeast, east and south Chico areas as well. Now, following this Board's adoption of the appropriate General Plan Amendment, and based upon the agreement Supervisor Dolan and I reached with the Council members in 1980, I believe it would be appropriate for the City Council to follow through with General Plan revisions of their own. It is my understanding

that city staff is, in fact, scheduling hearings for this purpose in October with the city's Planning Commission. I would hope the present Commission and Council would bear in mind the recent history of the proposal currently before them, and continue in the spirit of cooperation that appears to be emerging today. County cooperation with the City of Chico has been, and continues to be, ongoing at least since 1980. For this reason, I would suggest that now the impetus for revision and conformity shift to the Chico City Council. Whatever proposals emerge from Council discussions can be considered at future Intergovernmental Committee meetings, and within the context of the county's recently amended Plan.

2. *Urban Plan Committee.* I believe the Intergovernmental Committee has already and is currently acting in the capacity of the proposed Urban Plan Committee. Further, city participation at the county Planning Commission level is serving to bring the two governmental bodies closer together. Therefore, the addition of another committee would be redundant. Conformity is currently being pursued and achieved with existing mechanisms.

3. *County policy regarding urban zoning.* This proposal would require a major revision in the county zoning ordinance and policy. Before considering adopting such a major revision, I believe certain questions need to be addressed:

   a. Fiscal analysis for services provided by city/county.

   b. Long range planning effects of 5/10 acre parcel splits.

c. Criteria for determining minimum parcel sizes, soil, drainage, zoning, water, etc.

d. The role of the county in land use decisions.

If the Board is interested in pursuing such a policy, I would propose it be accomplished after the city and county Land Use Plans are brought into conformity.

Ravenwood

In the midst of the above general discussion comes the question of the specific Ravenwood Project. Although it does not currently conform to the City's existing General Plan, it would conform to the revised Plan now being proposed at the city Planning Commission (low density residential). It has been determined that there is sufficient capacity in the city sewer system to service the project. Although the project does not currently lie within the city's sphere of influence, it does lie within the revised sphere proposed by Councilman Nichols (Sycamore Creek being the northerly boundary). Clearly there is a strong case to promote city sewer hookup for the project, given these facts and the neighborhood support for hookup. I believe sewer hookups would be the most acceptable answer for all concerned, and would encourage hookup. I have also followed through on my commitment of September 8 to approach this Board with city concerns for the northeast Chico area. However, I do not believe it is appropriate to literally hold this project hostage while the city and county come to terms on more general matters. The conditions as outlined by Councilman Nichols are not appropriate conditions for approval of a specific development project. They are literally not

within the control of the applicant; therefore, he is not able to meet such conditions individually. These are matters currently under discussion by county/city governmental committees. The responsibility for meeting such conditions rests solely with the city and the county, regardless of the Ravenwood proposal.

Hilda Wheeler

HW/rd

Enclosure

OFFICE OF THE
CITY MANAGER

196 E. Fifth Street
P.O. Box 3420
Chico, CA 95927
(916) 895-4803
ATSS 459-4803

L-AGR-16-T29/chrono October 4, 1984

C. W. Bachman
Bachman & Associates
3012 The Esplanade
Chico, California 95926

Re: RAVENWOOD PLANNED AREA CLUSTER

Dear Cal:

Thank you for your letter of September 21, 1984, inquiring whether or not " . . . the possibility now exists for the hook-up of the above project to the City sewer system.", in the light of the current Nitrate Action Plan formulation process.

As you know, several of the key components of the pending Plan involve development of a unified land use plan for the Chico Urban Area, approval of master sewer and storm drainage plans, and formulation of a financing plan for whatever sewer and drainage plans are adopted. Since the foregoing will require intensive study and discussion between the City and the County during the coming months, it does not appear appropriate, at this time, for the City to consider further the connection of the Ravenwood Project to the City's sewer system.

I am sure you will want to continue to monitor the progress of the discussions between the City and the County on these matters in the coming months.

Thank you for your continued interest. If you have further questions or desire additional information, please do not hesitate to contact me.

Sincerely,
/s/ John
John H. Dougherty
Deputy City Manager

JHD/mb

cc: Planning Director w/att.
CM/PO/CDC/CA Info